

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

TOM JON RILURCASA,	)	Case No.: 1:20-cv-01568 JLT SAB (PC)
	)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATIONS AND DENYING
v.	)	DEFENDANT’S MOTION TO DISMISS
	)	
STATE OF CALIFORNIA, et al.,	)	(Docs. 38, 49)
	)	
Defendants.	)	
	)	

Tom Ron Rilurcasa is a deaf individual who asserts that he was denied access to an interpreter, which would allow for adequate participation in his medical appointments and treatment. Plaintiff seeks to hold Stu Sherman, former Warden at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF), liable in his official capacity, for violating Plaintiff’s rights under the Americans with Disabilities Act. (*See* Doc. 30 at 11.) Defendant moved to dismiss the Second Amended Complaint, asserting Plaintiff failed to exhaust his administrative remedies and failed to state a cognizable claim. (Doc. 38.)

The assigned magistrate judge found it was not clear from the face of the pleadings that Plaintiff failed to exhaust his administrative remedies. (Doc. 49 at 3-4.) In addition, the magistrate judge found Plaintiff stated a cognizable claim under the ADA, 42 U.S.C. § 12132. (*Id.* at 5-8.) Therefore, the magistrate judge recommended the motion to dismiss be denied. (*Id.* at 8.) The Court served the Findings and Recommendations on all parties and notified them that any objections were

1 due within 21 days. (*Id.*) The Court also advised them that the “failure to file objections within the  
2 specified time may result in the waiver of rights on appeal.” (*Id.* at 8-9, citing *Wilkerson v. Wheeler*,  
3 772 F.3d 834, 838-39 (9th Cir. 2014), *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).)

4 Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducted a *de novo* review of this case.  
5 Having carefully reviewed the entire file, including the lodged third amended complaint, the Court  
6 finds the findings and recommendations to be supported by the record and by proper analysis. Thus,  
7 the Court ORDERS:

- 8 1. The findings and recommendations issued on May 2, 2023 (Doc. 49), are **ADOPTED**  
9 **IN FULL.**
- 10 2. Defendant’s motion to dismiss (Doc. 38) is **DENIED.**
- 11 3. Defendant **SHALL** file an answer to the complaint within 14 days from the date of  
12 service of this order.

13  
14 IT IS SO ORDERED.

15 Dated: **June 19, 2023**

  
UNITED STATES DISTRICT JUDGE